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PROLIFERATION OF WEAPONS OF MASS DESTRUCTION:  
U.S. POLICY AND PRACTICE IN THE LATE 1990'S

by

Alan C. Bridges, Major, USAF

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Advisor: Lt. Col. Paul J. Moscarelli

Maxwell Air Force Base, Alabama

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## *Preface*

The proliferation of weapons of mass destruction poses a great challenge to the United States at the end of the 1990's, and the threat their use poses to its territory, its national interests, and its military forces and citizens overseas will continue to grow. I've been interested in researching U.S. non-proliferation policy, and the newer, complementary, counter-proliferation policy. In May 1998, the U.S. faced new challenges to the existing non-proliferation regime when India and Pakistan tested nuclear weapons. In 1998, U.S. counter-proliferation efforts saw an increased use of force, which made analyzing them more interesting, since we were obviously committed to pursuing a forceful approach under certain circumstances. Peter Clausen's work stood out as a realist explanation for the U.S. actions up to 1991, when he died from cancer. I wanted to see if his thesis applied to the latest U.S. actions, as well.

I would like to acknowledge the assistance LtCol Paul Moscarelli offered. He has been an invaluable coach in assisting my learning in this area, and in focusing my research efforts and writing attempts. I would also like to thank the staff at the Air University Library—they've all been fabulous, and I can't thank them enough for their assistance.

### *Abstract*

This paper analyzes US policy on weapons of mass destruction proliferation, concentrating on the recent actions in pursuit of that policy. In 1998, it became apparent the U.S. non-proliferation strategy had broken down and possibly harmed its national security, namely in Chinese relations and over the Indian and Pakistani nuclear tests. Also in 1998, the U.S. conducted two counter-proliferation attacks: the August cruise missile attacks against the Sudan and Afghanistan, and the December air strikes against Iraq. This paper's thesis is that realism, rather than its stated idealist policies, drives U.S. non-proliferation and counter-proliferation strategy. It analyzes these four cases to determine whether the non-proliferation actions and its counter-proliferation attacks were consistent with its stated policy, and looks at other explanations for U.S. actions. It then discusses the implications of those actions, offering a solution for how to justify U.S. counter-proliferation actions in the future. This analysis sides with Bradd Hayes, who offered a suggestion for a "Doctrine of Constraint" that places U.S. counter-proliferation efforts on firmer legal ground. It recommends the U.S. push to change international law, offering an internationally recognized justification for its counter-proliferation policy.

## Chapter 1

### Introduction

*Weapons of mass destruction pose the greatest potential threat to global stability and security.*

—1998 U.S. National Security Strategy

The proliferation of weapons of mass destruction (WMD) is a problem facing the U.S. at the end of the 1990s, and will continue to be a trenchant problem in the future. Les Aspin, U.S. Secretary of Defense, augmented U.S. non-proliferation policy this decade with the ‘Defense Counter-proliferation Initiative’ announced on December 7, 1993.<sup>1</sup> This relatively new counter-proliferation emphasis was later written into Defense Department publications, and has been studied extensively, within and outside the defense community, especially regarding its military utility, its ethical and legal implications, and its political consequences.<sup>2</sup>

This paper’s thesis is that U.S. non-proliferation and counter-proliferation strategy is driven by realism, rather than publicly stated idealist policies. This paper will look at the U.S. policies on WMD proliferation, emphasizing the latter half of the 1990’s. It will examine both non-proliferation and counter-proliferation policies and practice, focusing on the recent actions by the Clinton administration in order to assess their consistency.

In his book, *Nonproliferation and the National Interest*, Dr. Peter Clausen’s thesis is “that America has opposed the spread of nuclear weapons, not as a moral or humanitarian



imperative but out of hard-headed calculations of interest.”<sup>3</sup> Clausen was a respected scholar in the non-proliferation arena, and was working as the Director of Research for the Union of Concerned Scientists when he died in 1991. His book discusses the history of U.S. attempts to contain nuclear proliferation from 1945 to 1991. This paper attempts to update Clausen’s research by reconsidering his thesis that U.S. nuclear non-proliferation efforts are mainly driven by realist considerations, versus idealist concerns. It will also look at chemical and missile proliferation, extending his thesis to these areas, as well as to its newer counter-proliferation agenda.

This paper is organized into six chapters. Chapter one introduces the thesis of the paper and outlines the terms and methodology used in the paper. Chapter two describes recent U.S. policies on WMD proliferation. Chapter three addresses the cases of China and India/Pakistan, focusing on the U.S. non-proliferation agenda. National interests that competed with its non-proliferation policies drove American policy toward China, driving America to neglect non-proliferation. India and Pakistan both tested nuclear weapons in May 1998—the first nuclear weapon tests by non-nuclear states since 1974. This paper focuses on the recent U.S. approach to Pakistan’s nuclear program.

Chapter four addresses counter-proliferation, using the cases of Sudan/Afghanistan and Iraq, when the U.S. forcefully pursued its counter-proliferation policy for the first time. These were attempts to preempt the terrorist use of WMD (by Osama bin Laden’s network), and disable the Iraqi WMD program, in response to their repeated blocking of UN Special Commission (UNSCOM) efforts to do so peacefully. This chapter extends Clausen’s thesis, applying it to the U.S. counter-proliferation agenda. Chapter five summarizes the analysis of these case studies. Chapter six briefly addresses legal

implications of future U.S. counter-proliferation policy, since adequately justifying its actions should become a higher priority for the U.S. in the future.

## **Definitions**

This section will define several terms used throughout the paper. These include realism and idealism; weapons of mass destruction; non-proliferation and counter-proliferation; and certain legal concepts that apply to attacks against WMD targets, such as preemptive (or anticipatory) self-defense, and reprisal (or retaliation).

Realism and idealism are terms used in political science to describe a state's foreign policy formulation and predict or prescribe its pursuit of those goals. Hans Morgenthau was a pivotal author in international relations literature. His book *Politics Among Nations: The Struggle For Power And Peace* is widely recognized as a defining work in realism, and relates to earlier work by Machiavelli and Thomas Hobbes. Morgenthau said realism "assumes statesmen think and act in terms of interest defined as power, and the evidence of history bears that out."<sup>4</sup> The three tenets of realism include: *states* are the most important actors in an *anarchic global environment*, where their *search for power* is the primary motivator.<sup>5</sup>

In contrast, idealism focuses on "international law, morality and international organization, rather than power alone, as key influences on international events."<sup>6</sup> This paradigm traces its roots to Hugo Grotius, Woodrow Wilson and Hedley Bull, among others. Bull, a noted British authority on nuclear arms control, wrote about the idealist viewpoint, saying "all states, in their dealings with one another, are bound by the rules and institutions of the society they form."<sup>7</sup> Extending this concept of "society" further, idealism holds that the concepts of

morality, law and international organization can form the basis for relations among states; that human nature is not evil; that peaceful cooperative relations among states are possible; and that states can operate as a community rather than merely as autonomous self-interested agents.<sup>8</sup>

Traditionally, WMD have included nuclear, biological and chemical weapons. Missiles are often added to this list, due to their effectiveness at creating terror, even if they may not be militarily effective without WMD warheads. Since 1987, the Missile Technology and Control Regime has sought to prevent proliferation of missiles capable of delivering WMD over theater ranges.<sup>9</sup> Basic research programs that do not result in weapons are not considered proliferation, although such “dual-use” programs are problematic, due to their utility in creating a covert WMD capability. This paper will not address biological weapons, as the case studies do not relate to them.

Non-proliferation traditionally included such approaches as arms control, export restrictions on dual-use technology, and diplomatic efforts to de-legitimize proliferation.<sup>10</sup> WMD attacks are hard to prevent once an adversary has the weapons and delivery systems. Hence, the U.S. has emphasized preventing potential adversaries from gaining such weapons through a non-proliferation strategy. However, as Dr. Clausen’s work illustrates, “American efforts to stop the spread of nuclear weapons have in practice been ambivalent, equivocal, and selective—and as a result, too often ineffective.”<sup>11</sup> By the early 1990’s, WMD proliferation was a fact; therefore, the U.S. added a new twist to its old policy: counter-proliferation.

Counter-proliferation is defined as “the activities of the Department of Defense across the full range of U.S. efforts to combat proliferation, including diplomacy, arms control, export controls, and intelligence collection and analysis.”<sup>12</sup> This definition seems to overlap non-proliferation in many respects, but is focused on the DOD’s efforts.

Leonard Spector, a former Director of the Nuclear Non-proliferation Project of the Carnegie Endowment for International Peace, addressed the *de facto* bifurcation of proliferation approaches. He distinguished “the culture of diplomatic activism and the culture of military preparedness, rallying to the banner of non-proliferation and counterproliferation, respectively.”<sup>13</sup> Following his logic, this paper will treat counter-proliferation as rolling back a program that has produced WMD, focusing on military attacks in the case studies.

The U.S. has justified the attacks in the case studies using a legal doctrine of preemptive (or anticipatory) self-defense. Yoram Dinstein, a professor of International Law at Tel-Aviv University, describes self-defense “as a lawful use of force (principally, counter-force), under conditions prescribed by international law, in response to a previous unlawful use (or, at least, a threat) of force.”<sup>14</sup> A strict interpretation of Article 51 of the UN charter leads some to believe that a state may never preempt, as Israel did in 1967. Most legal scholars agree that when framing the UN charter, the previously acknowledged right of self-defense included situations when such preemption was legal.<sup>15</sup> Therefore, preemptive self-defense is permitted under the UN charter, according to most legal experts.<sup>16</sup> Self-defense includes the key concepts of necessity (exhausting other means of redress first), and the proportionality and immediacy of the defensive response relative to the initial attack.<sup>17</sup>

A related concept is reprisal, where one country attempts to punish another and change its future behavior, versus just defend itself. Reprisal has three parts: 1) the attacker must do something illegal, against the interests of another nation; 2) the second nation responds by attacking the outlaw to punish its behavior; and 3) the attack does

“not fit within the acceptable legal definition of the right of self-defense.”<sup>18</sup> Dinstein allows that “most writers deny that self-defence [sic] pursuant to Article 51 may ever embrace armed reprisals,” especially if they are “in response to an ordinary breach of international law (not constituting an armed attack).”<sup>19</sup> There is a debate over this issue, though. Retaliation is often used interchangeably with reprisal in the popular press, but it means just tit-for-tat exchanges. Such legal definitions may not seem important, but as naval aviator Bradd Hayes points out, they can become important if military personnel carrying out a counter-proliferation strike are captured.<sup>20</sup>

## **Methodology**

This paper will analyze the four cases to address where U.S. foreign policy aligned with its non-proliferation agenda, as well as where it conflicted with it. The U.S. decisions will be analyzed using criteria listed below. In cases where non-proliferation conflicted with other interests, it will be assumed that if the U.S. pursued other interests, it was due to its quest for increased power, thus indicating a realist perspective. If the U.S. pursued non-proliferation (or counter-proliferation) in spite of reduced power as a result, then that leads to an assumption of an idealist motive for its actions. Where the interests aligned with its counter-proliferation policy, U.S. legal explanations for its actions will be analyzed to determine if realism or idealism drove its actions.

The realist and idealist paradigms either predict or prescribe a state’s international policy. Viewed in these terms, realism would predict a state would pursue a non-proliferation or counter-proliferation policy when it aligned with other national interests, thus increasing their power. A realist would discard such an agenda when it conflicts with other interests that would increase their power. An idealist approach would

prescribe a non-proliferation strategy for its inherent benefit of reduced tensions between states, and not out of cold calculations of power. It would probably not condone the use of force to counter proliferation. To justify its counter-proliferation actions, a state would use international law concepts, addressed later.

All cases will be analyzed using three criteria: 1) diplomatic relationships; 2) commercial interests (or economic power); and 3) an assessment of national security. During her work at the National Defense University's Center for Counterproliferation Research, Paula DeSutter considered the issue of competing national interests involved in foreign policy calculations regarding proliferation. This paper's criteria are similar to hers: she discussed diplomatic interests, commercial interests, and arms control interests.<sup>21</sup> This study will find which foreign policy aims took precedence (over the U.S. non-proliferation agenda) in order to assess whether realism or idealism lies behind America's approach to both non-proliferation and counter-proliferation.

Where the foreign policy aims and counter-proliferation aims aligned, it will analyze U.S. motivation using its stated legal justification for its attacks, comparing them to the definitions of self-defense and reprisal. Using these legal criteria, an idealist approach would closely follow international law with a self-defense response to an attack, while a realist approach may use such idealist language, when it actually conducts reprisals that are widely considered illegal.

The cases were chosen because they provide the starkest contrast between U.S. non-proliferation policies and its conduct, and the 1998 attacks were the first in pursuit of its counter-proliferation strategy. The case studies will compare speeches, interviews and published policies of U.S. policymakers with reported events related to WMD issues.

Many internal government documents a historical researcher would have access to are not available at this time, and as such are not included. This study's scope is limited to its four cases. Notably, it does not consider Israeli, North Korean or Iranian proliferation efforts, or the success of the non-proliferation regime in preventing proliferation, such as in Brazil and Argentina.

This paper limits its focus to state-sanctioned/run nuclear and missile programs, and terrorist use of any WMD (however they are delivered) against the U.S. It is unlikely a terrorist organization could create a nuclear weapon on its own, or launch it with a ballistic missile. However, non-state actors may acquire nuclear weapons, or build their own chemical or biological weapons, as demonstrated in the 1995 Aum Shinrikyo subway attack in Japan. The four cases in this study do not involve biological weapons; therefore, they will not be discussed further.

### Notes

<sup>1</sup> Shai Feldman, *Nuclear Weapons and Arms Control in the Middle East*, (MIT Press, Cambridge, MA, 1997), 182.

<sup>2</sup> For a good treatment of these questions, refer to Michael A. Smith, Col, USA, and Jeffrey J. Schloesser, LtCol, USA, *The Preemptive Use of Force: Analysis and Decision-making*, U.S. Army War College, Carlisle Barracks, PA, 1997.

<sup>3</sup> Peter A. Clausen, *Nonproliferation and the National Interest*, HarperCollins College Publishers, New York, 1993, xiii.

<sup>4</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle For Power And Peace*, quoted in *Classic Readings of International Relations*, ed. Phil Williams, Donald M. Goldstein, and Jay M. Shafritz (New York: Harcourt Brace College Publisher, 1994), 35.

<sup>5</sup> Joshua S. Goldstein, *International Relations* (New York: HarperCollins College Publishers, 1994), 47.

<sup>6</sup> Idem.

<sup>7</sup> Hedley Bull, *The Anarchical Society: A Study of World Politics*, quoted in *Classic Readings of International Relations*, ed. Phil Williams, Donald M. Goldstein, and Jay M. Shafritz (New York: Harcourt Brace College Publisher, 1994), 22.

<sup>8</sup> Goldstein, 271.

<sup>9</sup> *Tracking Nuclear Proliferation: a Guide in Maps and Charts*, 1998, Rodney W. Jones and Mark G. McDonough (Washington, D.C.: Carnegie Endowment for International Peace, the Brookings Institution Press, 1998), 311.

## Notes

<sup>10</sup> James E. Doyle, Dr., and Peter Engstrom, Col, USAF, Ret., address non-proliferation in their chapter titled “The Utility of Nuclear Weapons: Tradeoffs and Opportunity Costs,” in *Pulling Back from the Nuclear Brink*, ed. Barry R. Schneider and William L. Dowdy (Portland, OR: Frank Cass Publishers, 1998), 39-59.

<sup>11</sup> Clausen, p. xii.

<sup>12</sup> Institute for National Strategic Studies, *Strategic Assessment 1996: Instruments of U.S. Power*, Washington, D.C., 1996, 121, quoted by Peter L. Hays, Vincent J. Jodoin, and Alan R. VanTassel, editors, *Countering the Proliferation and Use of Weapons of Mass Destruction* (USAF Academy, CO: USAF Institute for National Security Studies, 1998), 8-17.

<sup>13</sup> Leonard Spector addresses non-proliferation in his chapter titled “Can Proliferation Be Stopped? A Look at Events and Decision in the mid-1990s,” in *Pulling Back from the Nuclear Brink*, ed. Barry R. Schneider and William L. Dowdy (Portland, OR: Frank Cass Publishers, 1998), 60-66.

<sup>14</sup> Yoram Dinstein, *War, Aggression and Self-Defence*, 2<sup>nd</sup> Ed. (Cambridge, UK: Grotius Publications, 1994), 175.

<sup>15</sup> Frank Gibson Goldman addresses this question in Chapter V of *The International Legal Ramifications of United States Counter-Proliferation Strategy: Problems and Prospects* (Newport, RI: Naval War College, 1997), 21-37.

<sup>16</sup> Richard G. Maxon, *Nature's Eldest Law: A Survey of a Nation's Right to Act in Self-Defense* (Carlisle Barracks, PA: Army War College, 1995), 13; see also Smith and Schloessor, above, and Lori Fisler Damrosch and David Scheffer, *Law and Force in the New International Order* (Boulder, CO: Westview Press, 1991), especially part one, Self-Defense.

<sup>17</sup> Dinstein, 202-3.

<sup>18</sup> Goldman, 40.

<sup>19</sup> Dinstein, 221.

<sup>20</sup> Bradd C. Hayes, Capt., USN, “Calling a Duck a Duck,” *U.S. Naval Institute Proceedings*, Vol. 120, June 1994, 10-13.

<sup>21</sup> Paula DeSutter, *1997 Strategic Assessment*, Chapter 11, National Defense University, n.p.; on-line, Internet, available at <http://www.ndu.edu/inss/sa97/sa97ch11.html>, 29 January 1999.



## Chapter 2

### U.S. WMD Policies

*Try to reduce the dangers of nuclear war within the relevant future time period as best you can...You just get depressed [if you worry] about the long term future.*

—Paul Nitze,  
as quoted in R. Brownstein and N. Easton, *The Boys Behind the Bombs*

The U.S. policy toward WMD proliferation during the 1990's gradually expanded, increasing emphasis on arms control agreements and including counter-proliferation. The three National Security Strategies (NSS) published by the Clinton administration have included stopping WMD proliferation as a major policy objective. They classify it as a threat to its national interests, on a par with transnational and regional or state-centered threats. Each NSS addressed WMD proliferation, concluding WMD “pose the greatest potential threat to global stability and security” in the 1998 NSS.<sup>1</sup> The U.S. has declared various states of national emergency, reformed its programs, and created new organizations to deal with WMD proliferation. It has added counter-proliferation to its options to augment its traditional non-proliferation approaches. This section will describe these policies in more detail.

In its first NSS, the Clinton administration included both non-proliferation and counter-proliferation in its approach to WMD proliferation. The weapons specifically mentioned in its first NSS were nuclear weapons and the missiles to deliver them.<sup>2</sup> In

1994, key parts of the strategy included: the indefinite extension of the Nuclear Non-Proliferation Treaty (NPT); extending the Missile Control Technology Regime (MCTR), START II ratification and arms control. These approaches to non-proliferation closely align with an idealist focus on international law and norms to combat WMD proliferation.

Between his first and second NSS, President Clinton recognized the increasing threat that WMD posed to American security, and expanded his initial strategy. He enacted a state of emergency regarding WMD in November 1994; he has since renewed it annually.<sup>3</sup> In a May 1997 report to Congress, President Clinton addressed the U.S. Comprehensive Readiness Program for Countering the Proliferation of Weapons of Mass Destruction. Some statements from that document outline key parts of the U.S. approach to non-proliferation that are relevant to this paper's thesis. Specifically:

Through the recently-established Wassenaar Arrangement, the U.S. will *build international cooperation directed at controlling exports* of conventional arms and *dual-use goods and technology*.

*Active diplomatic efforts by Russia, China and emerging suppliers in preventing exports to nuclear, missile and chemical/biological programs in proliferator states will be maintained.* Similarly, activities designed to *prevent transfers that raise proliferation concerns* will continue [emphasis added]...

[Also, the] U.S. will continue to urge India and Pakistan to refrain from further steps toward the acquisition or deployment of nuclear weapons or missiles, and will encourage efforts toward nonproliferation dialogue within the region and with other countries.<sup>4</sup>

These statements illustrate the U.S. idealist commitment to non-proliferation methods, emphasizing arms control and diplomatic efforts to restrain proliferation.

In its 1997 NSS, the U.S. again treated WMD as a challenge as significant as regional and transnational threats, but increased its commitment to treaties. The U.S. signed the Chemical Weapons Convention (CWC) on January 13, 1993; four years later,

President Clinton persuaded Congress to ratify it, in April 1997.<sup>5</sup> Fresh from its CWC victory, the administration pushed hard for Senate approval of the Comprehensive Test Ban Treaty, calling it “a priority objective” in the 1997 NSS.<sup>6</sup> This treaty aims to prevent nuclear proliferation by outlawing testing—again, an idealist approach, focused on expanding its earlier successes.

Export controls were a prime method of pursuing the administration’s non-proliferation policy. In November 1998, President Clinton stated:

The export control regulations issued under the Enhanced Proliferation Control Initiative (ECPI) remain fully in force and continue to be applied by the Department of Commerce in order to control the export of items with potential use in chemical or biological weapons or unmanned delivery systems for weapons of mass destruction.<sup>7</sup>

Under previous administrations, sensitive, dual-use exports were subject to strict controls under the Department of State’s munitions control export list. President Clinton transferred this to the Department of Commerce in 1996, in effect allowing more rapid approval of such technology transfers.<sup>8</sup> This transfer of approval authority was due to another policy aim of the Clinton administration: increased trade was a core objective, listed second to sustaining U.S security in each NSS.

The U.S. established a Chemical and Biological Weapons Nonproliferation Center under the Department of Energy in 1996.<sup>9</sup> U.S. policy efforts in this area received less attention than countering nuclear proliferation in the first NSS, but chemical/biological weapons received more emphasis in 1998 and 1999. President Clinton recently announced the creation of a national task force to counter them, as well as information attacks.<sup>10</sup> Non-proliferation is also concerned with the means to deliver the weapons, particularly long-range missiles. The U.S. was instrumental in starting an informal method to slow the spread of such technology, addressed below.

The U.S. initiated the Missile Technology Control Regime (MTCR) in 1987; the G-7 nations implemented it. It now has 29 nations following its non-proliferation guidelines. The U.S. led this expansion in the late 1990's as other countries agreed that the MTCR was a good way to increase their own security. Notable exceptions to membership in this loose agreement (in terms of enforcement power) include China, India, Pakistan, Iran, Iraq, Libya, and North Korea.<sup>11</sup> The National Security Strategy has consistently treated missile proliferation as a significant problem, from 1994 to 1998, and has again followed its idealist approach.

After outlining the policies aimed at preventing proliferation, this paper now turns to the counter-proliferation policy pursued by the Clinton administration in more detail. President Bush started this trend in American foreign policy when he stated that Iraqi WMD were one reason the U.S. was fighting the Gulf War in 1991. President Clinton's first Secretary of Defense outlined his Defense Counterproliferation Initiative (CPI) in December 1993.<sup>12</sup> The CPI broadly focused on protection and prevention.

Mitchel Wallerstein, a former Deputy Assistant Secretary of Defense for Counterproliferation Policy, helped draft the CPI. He wrote about the confusion Aspin caused when he announced it. Questions arose over whether this new initiative meant the Department of Defense's new program would take precedence over the Department of State's oversight of the nation's non-proliferation program.<sup>13</sup> The CPI was not intended to cause such confusion, but merely acknowledge the fact that non-proliferation, by itself, could not prevent WMD use by a determined adversary, nor could it protect U.S. military forces.

This counter-proliferation theme has continued to grow in importance since first added to the NSS in 1994: successive policy statements have focused national attention on the problem. Under this initiative, the Department of Defense has added counter-proliferation to the missions its combatant commanders are tasked to perform. The Joint Chief's National Military Strategy outlines these missions in support of the CPI: preventing the spread of WMD; detect WMD; destroy WMD before use; deter or counter WMD; protect the force from WMD effects; and restore areas affected by WMD use.<sup>14</sup>

The most recent renewal of the WMD state of emergency significantly "broadens the type of proliferation activity that subjects entities to potential penalties under the Executive order."<sup>15</sup> The original Executive order addressed biological and chemical weapons programs. In July 1998, President Clinton expanded this to include nuclear weapons and missile delivery programs. This state of emergency, however, does not authorize the U.S. to use force to counter WMD proliferation.

### Notes

<sup>1</sup> *A National Security Strategy For A New Century* (Washington, D.C.: Government Printing Office, October 1998), 6.

<sup>2</sup> *A National Security Strategy Of Engagement And Enlargement* (Washington, D.C.: Government Printing Office, October 1994), 11.

<sup>3</sup> President, "Letter to Congressional Leaders on Continuation of the Emergency Regarding Weapons of Mass Destruction," *Weekly Compilation of Presidential Documents*, 34, No. 46, 16 November 1998, 2301.

<sup>4</sup> President, "Report on the U.S. Comprehensive Readiness Program for Countering the Proliferation of Weapons of Mass Destruction," 105<sup>th</sup> Cong., 1<sup>st</sup> Session, 1997, House Document 105-79, 3-4.

<sup>5</sup> Further details can be found at the homepage for the Chemical Weapons Convention, n.p., on-line, Internet, 31 January 1999, available at <http://www.opcw.nl/ptshome2.htm>.

<sup>6</sup> *A National Security Strategy For A New Century* (Washington, D.C.: Government Printing Office, May 1997), 7.

<sup>7</sup> President, "Letter...", 16 November 1998, 2303.

## Notes

<sup>8</sup> Miles A. Pomper and Chuck McCutcheon, "House Panel Issues Proposals For Preventing Chinese Theft Of U.S. Military Technology," *CQ Weekly*, 2 January 1999, 29.

<sup>9</sup> "Reducing the Threat of Biological Weapons," *Science and Technology Review*, June 1998, n.p., on-line, Internet, 18 January 99, available at <http://www.llnl.gov/str/Milan.html>.

<sup>10</sup> William J. Clinton, 22 January 99 Remarks by the President on *Keeping America Secure for the 21<sup>st</sup> Century*, n.p.; online, Internet, 30 January 99, available at <http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/1/22/9.text.1>.

<sup>11</sup> For a concise discussion of the MTCR, look at Appendix G of *Tracking Nuclear proliferation: A Guide in Maps and Charts, 1998* (Washington, D.C.: Carnegie Endowment for International Peace, Brookings Institution Press, 1998).

<sup>12</sup> Shai Feldman, *Nuclear Weapons and Arms Control in the Middle East* (Cambridge, MA: MIT Press, 1997), 182.

<sup>13</sup> Mitchel B. Wallerstein, "The Origins and Evolution of the Defense Counterproliferation Initiative," in Peter L. Hays, Vincent J. Jodoin, and Alan R. VanTassel, editors, *Countering the Proliferation and Use of Weapons of Mass Destruction* (USAF Academy, CO: USAF Institute for National Security Studies, 1998), 21-35.

<sup>14</sup> Joint Chiefs of Staff, *National Military Strategy of the United States of America*, (Washington, D.C.: Government Printing Office, 1997), 26.

<sup>15</sup> President, "Letter...", 16 November 1998, 2301-7.

## Chapter 3

### Non-Proliferation Policies in Practice

*Hughes and Loral Technology Exports to China Harmed Security, Panel Says.*

—Robert S. Greenberger<sup>1</sup>

The late 1990's saw increased U.S. efforts at non-proliferation. This paper will analyze the U.S. relationship with China, and U.S. reaction to the Indian and Pakistani arms race. This chapter will apply the three criteria to these cases to analyze why non-proliferation was usually relegated to last place in U.S. foreign policy.

### Chinese Missiles and U.S. High Technology

Clinton and Bush policies toward China are similar. William Clinton defeated George Bush on a platform that emphasized the economy as its central issue. This approach focused on improving a more broadly defined concept of national security that included improved economic power and diplomatic relationships, versus focusing on military threat calculations. Clinton followed this approach after the election, especially with China. Restricting U.S.-China trade would hurt the U.S. economy, and hence its security. Clinton's first NSS illustrated this approach, cutting previous administration's connections between China's human rights record and trade deals.<sup>2</sup> In the end, this approach hurt American national security.

## **Diplomatic Interests**

President Clinton sought to improve relations with China, at the expense of pursuing non-proliferation aims. He improved the diplomatic relationship, but it has not benefited the U.S. non-proliferation policies or security. These improved diplomatic ties fostered increased U.S. trade with China, as well as allowing Chinese influence on the American electoral process.

Some Republicans allege that China influenced the domestic political process during the 1994 and 1996 elections, and was just being rewarded for their campaign contributions. These allegations were never proven, but there are other possible links between the administration's Chinese policy and Democratic Party campaign contributions. For example, Loral Chairman Bernard Schwartz was the "Democrat's top individual donor in 1996. Mr. Schwartz and the Clinton Administration have denied any connection [between political donations and U.S.-China policy]."<sup>3</sup> The economic section addresses why Loral and China would benefit from the improved relations such contributions could foster.

Bill Gertz is a reporter for the Washington Times that follows Clinton's China policies. He reported last spring:

...the disclosure of a secret administration plan to invite China to become a formal member of the 29 nation Missile Technology Control Regime and allow Beijing access to missile-related U.S. exports it has been denied since sanctions were imposed after the 1989 massacre of demonstrators in Beijing's Tiananmen Square.<sup>4</sup>

Such a plan aligns with the administration's approach to improve diplomatic relations at the expense of proliferation: China has a long history of exporting such technology.

The administration also played down the importance of alleged Chinese spying to avoid interfering with its diplomatic agenda. Recent reports describe how the Clinton



administration pursued normal Chinese relations in the face of credible allegations of spying on U.S. nuclear laboratories, allowing China to miniaturize their nuclear warheads.<sup>5</sup> In short, the reports confirm the trend: the Clinton administration chose to minimize proliferation issues that conflicted with its policy of improving relations with China.

### **Economic Interests**

President Clinton used economic exchanges to improve relations with China at the expense of stated U.S. non-proliferation policies. The areas relevant to this thesis are high technology transfers, such as communication satellites, missile launch expertise and high performance computers. The U.S. sought to increase trade using the Department of Commerce (DOC) to push exports to China.

The Commerce Department's mission is to increase exports, without endangering national security. They have relatively lax standards, when compared to the State Department's munitions list rules. Easier standards fostered economic transactions, but dual-use technology still required a presidential waiver. A 1993 memo regarding the new Administration's first technology transfer waiver illustrates the competing pressures on the administration. These included forcing China to stop missile proliferation (non-proliferation), maintaining good relations with Beijing (improved diplomatic power), and promoting American satellite industry (improved economic power).<sup>6</sup>

The administration also granted waivers to allow Hughes and Loral to provide satellites to Chinese commercial firms in 1996. These dual-use items were for commercial communications—Clinton justified his decision by saying that China was using satellites for solely civilian purposes, and he called the waivers that authorized

them “pretty routine.” Only later did Administration officials admit that there was little they could do to prevent their use by the Chinese military.<sup>7</sup> President Clinton actually waived while his own Justice Department was conducting a criminal probe of a previous transfer, undermining his own government’s actions.<sup>8</sup> Such action follows the realist paradigm: Clinton thought he was increasing U.S. power.

Another area where technology transfers to China cut across different vital interests was transferring expertise regarding more reliable rocket launches, also in 1996. Hughes and Loral aided Chinese satellite launch programs after two Chinese rockets blew up with American satellites on board.<sup>9</sup> The two launch failures cost the U.S. companies dearly, however, so both Hughes and Loral attempted to increase Chinese launch reliability. However, the expertise they transferred to China could also be used to increase the reliability of their nuclear-tipped ICBM’s.

High performance computers (HPCs) can be used to model complex systems, such as weather systems and economic models—or for designing nuclear warheads. For the latter reason, such transfers to certain nations had been restricted in the past. Under Clinton’s drive to expand trade, approval authority for these sales were transferred to the DOC’s Bureau of Export Affairs (BXA). Congress put certain restrictions on BXA, requiring them to conduct end user inspections after the computers have been delivered. Recently, the BXA reported:

One hundred ninety-one HPCs were exported to China. As a result of a framework arrangement made during the U.S.-China summit in June 1998, one on-site visit to an HPC end-user was conducted during the reporting period. Subsequently, BXA conducted two additional HPC visits.<sup>10</sup>

The press release quoted William A. Reinsch, Under Secretary of Commerce for Export Administration, advocating less restrictive requirements for BXA end-user on-site visits.

He called them a “wasteful government expense and no improvement to national security.”<sup>11</sup> At the rate of 3 visits for 191 sales, one can wonder how his suggestion could be any worse than a 2% inspection rate.

Obviously, technological improvements will keep causing today’s limits on technology to become obsolete. An adversary can purchase these items elsewhere in today’s market. They do have a use in decreasing actual nuclear testing. Without such computers to model nuclear weapons tests, the U.S. Department of Energy’s nuclear stockpile management program would be suspect. The likelihood of the Comprehensive Test Ban Treaty coming into force in September 1999 would also decrease, due to other nation’s requirements to continue actual testing of nuclear warhead designs. Such considerations may be behind the Clinton administration’s efforts to increase such trade with China, also. However, these trades follow the same pattern as the communication satellite sales addressed earlier, and illustrate the realist considerations behind Clinton’s policy.

### **National Security Interests**

Clinton’s idea of national security is broader than strictly military comparison, as discussed before. By pursuing improved diplomatic relationships and economic power, he thought he was improving national security, even at the expense of his stated non-proliferation policies.

Technological transfers to China were extensively investigated by Representative Chris Cox, R., CA.<sup>12</sup> Cox chaired a bi-partisan special committee that recently concluded a six-month investigation, delivering a 700 page classified report to Congress in January, 1999. Cox’s bi-partisan committee concluded that the transfers hurt U.S. national

security. In announcing its delivery to Congress, Cox said: “based on unclassified information, I can tell you today that we have found national security harm did occur.”<sup>13</sup> In response to these findings, Congress imposed stricter controls on technology transfers to China, returning them to the State Department for oversight under their stricter munitions standards.<sup>14</sup> It appears that in pursuing improved economic status and diplomatic relations, the U.S. increased its military vulnerability to Chinese attacks. President Clinton’s strategy did increase trade, but somewhere in his administration’s balancing act between increased trade, American dominance in high technology markets, and national security, his administration miscalculated one cost-benefit equation.

## **Conclusion**

According to the criteria, the Clinton administration pursued improved economic power and a better diplomatic relationship with China, in order to improve their concept of an expanded national security. Even though other Cox’s committee found that Clinton’s policy’s harmed national security, the administration thought they were improving it. These efforts came at the expense of the stated U.S. non-proliferation agenda, allowing China to continue its proliferation efforts. Such actions support the thesis that realism, versus idealism, drove U.S. policy. Idealist actions would have included using international law and economic sanctions to apply pressure against Chinese actions that encouraged proliferation; the Clinton administration did not do this.

## **Pakistani Proliferation**

Pakistani proliferation illustrates that the U.S. pursues power versus implementing an idealist non-proliferation policy. The U.S. has long treated Pakistani proliferation with

ambivalence. The Pakistani and Chinese cases are related due to Chinese help for Pakistan's programs. This case study will address these areas, and examine U.S. actions during a crucial period after India tested their nuclear weapons, but before Pakistan tested theirs. It will also examine U.S. actions since the tests.

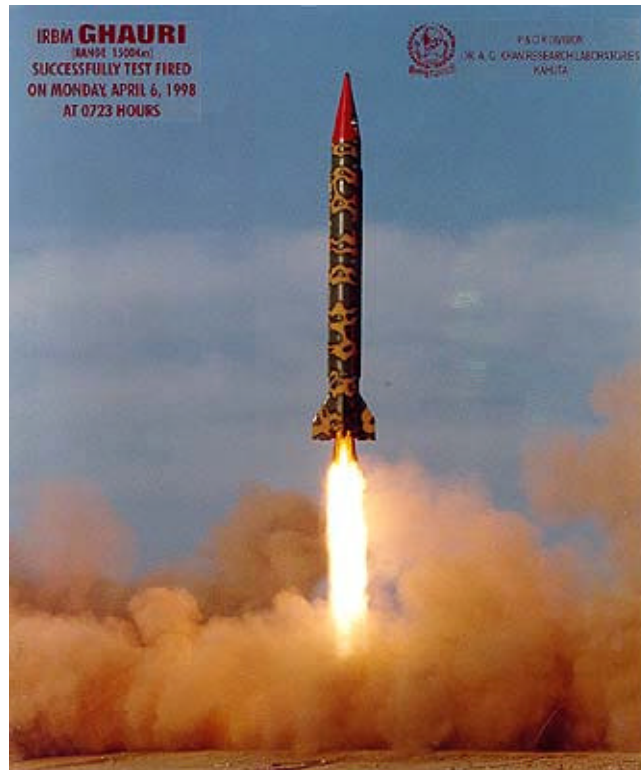
### **Diplomatic Interests**

The U.S. allowed Pakistani proliferation due to realist foreign policy considerations. These include its low priority addressed to south Asian matters, its commitment to improved Chinese relations, and national interests in not exerting great diplomatic influence to punish Pakistan or India for their proliferation efforts.

Pakistan has been an awkward case for U.S. non-proliferation policy. The U.S. sought influence with them to contain communism—influence it could not gain with India. When the USSR invaded Afghanistan in 1979, the U.S. overlooked Pakistani proliferation. Instead, it improved relations with them to support the mujahadeen fighting the Soviets in Afghanistan. Fighting communism was a vital national interest for the U.S. (combating USSR expansionism), and it overruled its non-proliferation agenda. The U.S. continued to overlook their nuclear proliferation attempts until the USSR withdrew. In 1990 the U.S. Congress blocked the sale of 36 F-16A's to Pakistan, after the Bush administration could not prove Pakistan had stopped its nuclear weapon research.<sup>15</sup> Over the next few years, it was assumed that both Pakistan and India were *de facto* nuclear states, with the capability to construct a nuclear device in a short time. U.S. non-proliferation efforts continued, with the NPT extension in 1995 and the 1996 negotiations for the CTBT standing out as high points.

China-Pakistani missile transfers show that the U.S. objective of promoting trade with China impinged on its non-proliferation strategy regarding Pakistan. China exported M-11 IRBM's to Pakistan. Successive U.S. administrations wrangled their way out of imposing Congressionally-mandated tough sanctions on China by saying they could not verify that China shipped complete missiles—only certain components. The missiles had not been removed from their crates, according to intelligence sources, so there was no way to tell what was in them. Recent reports indicate China is helping Pakistan build a domestic capability to produce their M-11 IRBM, although it may not be complete yet.<sup>16</sup> Seeking improved economic and diplomatic relationships with China took precedence over the U.S. non-proliferation agenda—signifying realism over idealism.

With possible Chinese and North Korean help, Pakistan launched an indigenous IRBM, their Ghauri missile, in April 1998 (see figure 1). This missile is named after a Muslim warrior who invaded India in the 12<sup>th</sup> century—a symbolic gesture sure to increase tensions in the region.<sup>17</sup> The U.S. took little notice of this escalation of the south Asian arms race. It is difficult to tell whether a more aggressive U.S. non-proliferation strategy would have reduced tensions on the Indian sub-continent enough to prevent the Indian nuclear tests in May 1998.



**Figure 1. Ghauri medium range ballistic missile liftoff on 6 April 1998.<sup>18</sup>**

Following the Indian nuclear tests, the U.S. attempted to persuade Pakistan to refrain from nuclear weapons testing. Idealism would have driven the U.S. to support broad international efforts to punish India, while offering enhanced security guarantees to Pakistan, thus supporting non-proliferation. The best the Clinton administration could offer, however, was to look out for its own interests—it would not extend any explicit security guarantees to Pakistan. President Clinton urged Pakistan “restraint,” offering to “find a way that the Pakistani people would also support, to avoid this [nuclear testing].”<sup>19</sup> He did not commit to G-8 support of strong sanctions when asked about that very subject; instead, he commented on the CTBT and said “There are ways for a great nation to preserve its security without nuclear weapons, and that’s what I want to focus on.”<sup>20</sup> This is consistent with Clausen’s discussions of British and Israeli proliferation. In those cases, the U.S. saw its security decrease if it extended deterrence over another

country. Instead, “allowing” those countries’ proliferation efforts increased U.S. security.<sup>21</sup>

There are implied limits to this approach of the U.S. “allowing” proliferation, however. Such an actor must be determined to succeed anyway; they must be viewed as relatively stable; and they must not be viewed as threatening to U.S. interests. The United Kingdom and Israel both met these tests, but the U.S. never viewed Pakistan as falling in the same category in the past. Instead, the efforts to stop their proliferation had been mainly diplomatic and economic pressure to keep them from testing their *de facto* achievements. With Pakistan, the U.S. failed to exert sufficient pressure on them following their Ghauri missile test to allay Indian security concerns. The U.S. also failed to exert sufficient pressure to gain international support for harsh sanctions against India, allaying Pakistani concerns.

The U.S.-led drive to keep Pakistan from testing included offering to release the F-16’s sold to Pakistan—and held for eight years. It did not work, however: “Zamir Akram, a senior Pakistani diplomat, said that Pakistan would like to see how the United States addresses its security concerns and ‘if this means releasing our F-16s, I’m sorry, but they are trying to bribe us with something that belongs to us.’”<sup>22</sup> After the Indian tests, the U.S. seemed more worried about its “intelligence failure” in missing Indian test preparations. It was unable to gather sufficient international support at the G-8 summit the following week for harsh sanctions against India. Pakistan hoped for something along the lines of the UN Special Commission (UNSCOM) and its Iraqi inspection and disarmament regime.<sup>23</sup> Pushing for such a program would have damaged U.S. diplomatic relationships, and Pakistani non-proliferation was not worth that price.



In the end, following India's tests earlier that month, Pakistan conducted 6 atomic tests at their Chagai Hills site (see Figure 2).



**Figure 2. Dr. Abdul Qadeer Khan, widely proclaimed as the “Father of Pakistan’s atomic bomb,” stands in the access tunnel inside the Chagai Hills nuclear test site before Pakistan’s 28 May 1998 underground nuclear test.<sup>24</sup>**

### **Economic Interests**

U.S. non-proliferation policy after the Soviet withdrawal from Afghanistan was not very strict at first, as successive administrations sought to continue arms trades with Pakistan, at the expense of pursuing non-proliferation.<sup>25</sup> This aligns with realism: increased trade and an improved relationship with a neighbor of the USSR equal increased power to contain them.

The rest of this section will examine the U.S. post-test actions in the economic arena. As addressed above, there was no G-8 integrated approach to sanctions on India that adequately addressed Pakistan’s valid security concerns, and they tested shortly after India. Long-term application of economic sanctions against India and Pakistan were not in the best interests of the U.S., as it was trying to avoid repercussions from the Asian economic crisis already. Initially, the administration imposed economic sanctions on

both governments, but eased off after both showed signs of committing to the CTBT in October 1998.<sup>26</sup> The Congress approved of President Clinton's November 9, 1998 decision to remove most sanctions on both countries, allowing increased trade again.<sup>27</sup>

The high technology sector of the economy is a driving force in the current U.S. economy. Andrew Robinson asserts there is a good explanation for reducing U.S. trade sanctions so quickly:

the fact is, the administration refuses to take serious action because without India, the information technology industry—the largest sector of the U.S. economy—could be in big trouble.

One-fourth of the world's programmers are Indians, and, according to a recent issue of Migration News Bulletin from UC-Davis, one-third of wages paid in information technology go to Indians.<sup>28</sup>

Protecting this industry ties in well with improving its high technology market share, but such action comes at the expense of the U.S. non-proliferation strategy. America needs to maintain diplomatic relationships with both countries, so it treats Pakistan with the same reduced sanctions India receives. In effect, lightly applied sanctions may show future proliferators the U.S. reaction: if they present a *fait accompli* and negotiate afterwards, they can get away with only a temporary economic setback in exchange for nuclear weapons and a delivery capability.

### **National Security Interests**

It seems the U.S. attempts to provide security to Pakistan were limited by its lack of resolve to firmly commit itself to Pakistan's security. Realism explains this in both the cases of the United Kingdom and Israel: proliferation limited the American nuclear defense commitments to these countries. Doing so was in the best interests of the U.S. then; extending such a commitment to Pakistan in 1998 was not in the best interest of

America. It would not have gained anything by this commitment except a greater likelihood of being drawn into a conflict where its vital interests were not threatened (its national security would therefore be harmed). Allowing proliferation (or at least, not punishing it too hard) would not damage the existing diplomatic relationships with Pakistan, a regional friend. When it comes right down to its national security interests, defined in military terms, Pakistani nuclear weapons pose little direct threat to the U.S.

### **Conclusion and Recent Developments**

Despite its announced non-proliferation policy, America will weigh its economic, diplomatic and national security interests more heavily than international law, morality and international organizations when deciding what foreign policy to pursue. Again, realist assumptions appear to have guided America's spotty, ineffective non-proliferation efforts with China, Pakistan and India.

The Clinton administration's approach since May 1998 to both countries has been one of accommodation, not confrontation. Recent Pakistani-Indian agreements show the success of the approach. The accommodating approach may have worked better than continued sanctions, as a stronger non-proliferation regime would require.

Recent developments in the on-going talks between both countries, encouraged by the U.S., show promise. In February 1999, "Prime Minister Atal Behari Vajpayee of India accepted a warmly worded invitation from Prime Minister Nawaz Sharif of Pakistan to ride the first bus to roll from India to Pakistan in half a century and to search for a breakthrough to peace between the hostile nations."<sup>29</sup> It seems that instead of decreasing security on the peninsula, nuclear weapons may reduce tensions—or at least added incentives to negotiate on their differences. This announcement was in spite of

India brandishing their missile power in their Republic Day parade the week prior to the announcement noted above.<sup>30</sup>

### Notes

<sup>1</sup> Robert S. Greenberger, "Hughes and Loral Technology Exports To China Harmed Security, Panel Says," *Wall Street Journal*, 31 December 1998, A3.

<sup>2</sup> See the 1994 NSS, p. 24, for a discussion of the U.S. approach to China, de-linking trade and human rights.

<sup>3</sup> Eric Schmitt, "Helms Says Clinton Tried to Protect China by Waiving Curbs on Satellite Exports," *New York Times*, 12 June 1998, A8.

<sup>4</sup> Bill Gertz, "U.S. firms' tips boosted Chinese missile program," *Washington Times*, 14 April 1998, 3.

<sup>5</sup> James Risen and Jeff Gerth, "China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say," *New York Times*, 6 March 1999, 1.

<sup>6</sup> Schmitt, "Helms..."

<sup>7</sup> Much of the information in this paragraph comes from an article by Jeff Gerth, "Reports Show Chinese Military Used American-Made Satellites," *New York Times*, 13 June 1998, A1, A8.

<sup>8</sup> "China Syndrome," editorial, *Wall Street Journal*, 14 April 1998.

<sup>9</sup> Elaine Sciolino and Jeff Gerth, "Scientist Assured China Of His Help", *New York Times*, 6 June 1998, A1.

<sup>10</sup> Department of Commerce BXA press report, "Commerce Report: Growing Demand For U.S. High Performance Computers," n.p., on-line, Internet, available at <http://www.bxa.doc.gov/>, 30 January 1999.

<sup>11</sup> Ibid.

<sup>12</sup> Business Week "The Smart Missile Aimed At Clinton," October 1998.

<sup>13</sup> Greenberger, "Hughes..."

<sup>14</sup> Pomper and McCutcheon, "House Panel..."

<sup>15</sup> Feldman, 177.

<sup>16</sup> Robert S. Greenberger and Matt Forney, "China-Pakistan Missile Pact Shows Calculated Strategy," *Wall Street Journal*, 15 December 1998, A14.

<sup>17</sup> Rahul Bedi, *London Daily Telegraph*, in "India warns it won't back off in missile race with Pakistan," *Washington Times*, 8 April 1998, 13.

<sup>18</sup> Photo courtesy of Simon Henderson, on-line, Internet, available at <http://www.cns.miis.edu/research/india/photos.htm>, 23 January 1999.

<sup>19</sup> President, "Remarks Prior to Discussions With Prime Minister of Japan and an Exchange With Reporters in Birmingham, United Kingdom," *Weekly Compilation of Presidential Documents*, 34, No. 20 (15 May, 1998): 874.

<sup>20</sup> President, "Exchange With Reporters Prior to Discussions With President Jacques Chirac of France in Birmingham," *Weekly Compilation of Presidential Documents*, 34, No. 20 (15 May, 1998): 876.

<sup>21</sup> Clausen, chapters three and five; see also Shai Feldman's discussion on Israel.

## Notes

<sup>22</sup> Shelby McNichols, "Indian and Pakistani Nuclear Tests," Monterey Institute of International Studies, Center for Non Proliferation Studies, n.p., on-line, Internet, 23 January 99, available at <http://www.cns.miis.edu/research/india/paknucch.htm>.

<sup>23</sup> Stephen Kinzer, "Pakistan Demands That World Powers Isolate India," *New York Times*, 14 May 1998.

<sup>24</sup> Henderson, 23 January 1999.

<sup>25</sup> Clausen discusses U.S. policy toward Pakistan in chapters six and seven, 146-153 and 164-170.

<sup>26</sup> Tariq Rauf, "Learning to Live With the Bomb in South Asia: Accommodation Not Confrontation," published in *The Bulletin of Atomic Scientists*, January/February 1999, 14-16, on-line, Internet, available at <http://cns.miis.edu/pubs/reports/accom.htm>, 23 January 1999.

<sup>27</sup> "Lawmakers Praise Clinton's End to Sanctions on India, Pakistan," *CQ Weekly*, 14 November 1998, 3078.

<sup>28</sup> Andrew Robinson, "Software For U.S.—Warfare For India?," *San Francisco Examiner*, 27 January 1999.

<sup>29</sup> Celia W. Dugger, "Indian Accepts Pakistani Offer To Take A Ride," *New York Times*, 4 February 1999.

<sup>30</sup> "India Proudly Displays Nuclear-Capable Arms," *International Herald Tribune*, 27 January 1999.

## Chapter 4

### U.S Counter-Proliferation: 1998 Attacks

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.*

—Article 51 (extract), United Nations Charter

The year 1998 was a seminal year for the U.S. in terms of its counter-proliferation strategy. While 1991 marked the first war with counter-proliferation as a pronounced aim, 1998 saw two separate attacks by the U.S. with the same avowed intention. President Bush listed Iraqi WMD programs as a significant reason for launching Operation DESERT STORM. He was leading a UN coalition of forces with world opinion in favor of the crusade against Saddam Hussein's invasion of Kuwait. In August 1998, President Clinton launched 79 cruise missiles against Osama bin Laden's terrorist training camps in Afghanistan and a Sudanese pharmaceutical plant in Khartoum; the U.S. attacked unilaterally, under the legal concept of preemptive self-defense. In December 1998, he attacked Iraqi WMD assets in concert with British warplanes (and tacit Arabian support), but there was much less worldwide public opinion in favor of these strikes. This paper will analyze these strikes to see if they were primarily for countering the proliferation of WMD due to idealist reasons, or for furthering other U.S. national interests, as realism would predict.

## **Osama bin Laden's Network Attacked: Self-Defense or Reprisal?**

This section will describe the events surrounding the attacks on Sudan and Afghanistan. Then, it will examine the attacks in light of the three criteria. Since these criteria cannot discern whether realism or idealism drove a nation's actions when both paradigms predict the same actions, this paper will use legal considerations to discern the nature of the U.S. attacks.

### **Building up to Cruise Missile Attacks**

In the spring of 1998, Osama bin Laden announced he was going to launch more attacks against Americans and its interests around the world, protesting America's involvement in the Persian Gulf. There were indications he had planned or prosecuted terrorist attacks against the U.S. before.<sup>1</sup> He was not taken seriously in the public press until the twin bombings of the U.S. embassies in Kenya and Tanzania on 7 August 1998, but the U.S. had mulled over plans to snatch him from his hideout in Afghanistan before then.<sup>2</sup>

Within two weeks of the embassy bombings, President Clinton authorized cruise missile attacks against bin Laden's terrorist training camps in Afghanistan, as well as a pharmaceutical plant in Khartoum, Sudan. He announced these attacks during a "family vacation" at Martha's Vineyard, while he was ostensibly atoning for misleading his family (and the nation) after publicly admitting his affair with Monica Lewinsky. The journalists who were shocked to hear about the attack had been watching the movie *Wag the Dog* in the press tent minutes before President Clinton made his announcement. It was an ironic start to several months of administration back-pedaling on the rationale behind the Sudanese attack, in particular.<sup>3</sup>

The Administration's case for attacking both targets immediately came under fire, especially over the timing of the attack. (In the movie, *Wag the Dog*, a president's campaign advisor cooks up a phony war to divert attention from the President's sexual peccadilloes). The case for the Afghanistan attacks seemed fairly solid: intelligence pointed to a meeting of bin Laden's associates at that camp. As fellow terrorists, they were legitimate targets, since the administration said they were meeting to plan future attacks against national interests. Afghanistan's Taliban was certainly not going to deliver him into U.S. custody.<sup>4</sup>

The Clinton administration partially justified their attack on the plant by referring to a soil sample that contained traces of EMPTA, a precursor to the deadly VX nerve gas. The administration was too slow getting this word out for some critics, who then attacked the credibility of the evidence when the government would not show it. Later backpedaling on the administration's part didn't help matters, either. Clinton initially said "Our forces also attacked a factory in Sudan associated with the bin Laden network. The factory was involved in the production of materials for chemical weapons."<sup>5</sup> Later, the administration admitted there were no direct links between the al Shifa plant and bin Laden, but alleged that the Sudan was tied into Iraqi chemical weapons manufacturing.<sup>6</sup> It also acknowledged the plant could have made medicines, as the Sudanese government claimed, but its "dual-use nature" was irrelevant to its validity as a target.<sup>7</sup> In fact, chemical weapons are manufactured much like any other chemical, including fertilizer or medicine—the only harm done was to the administration's credibility for its imprecise linkage to bin Laden, then Iraq. While they couldn't describe a link to bin Laden



initially, they now say its owner is tied to bin Laden and the Iraqi WMD program, as well as the Sudanese military industrial complex.<sup>8</sup>

An unintended consequence of the strike is a pending suit by Saleh Idris (in U.S. courts), who bought the al Shifa plant in April 1998.<sup>9</sup> Another unintended consequence of the attack was the loss of two cruise missiles in Pakistan, which they recovered and were allegedly studying. It's ironic that the U.S. attempts to prevent Chinese missile transfers to Pakistan might be upstaged by its own "gift" of two high-tech cruise missiles for Pakistan to reverse engineer!<sup>10</sup>

### **Diplomatic, Economic and National Security Interests**

Diplomatic relations with the Taliban in Afghanistan have not been good. Economic concerns did not restrict these attacks as economic relations with China restricted its non-proliferation policy. U.S. economic relations with both countries were minimally important to its well being. The U.S. declared a state of emergency with the Sudan over its sponsorship of terrorism and relationship to the Iraqi WMD programs, showing the degree the problem affected its national interests.

President Clinton declared a national emergency over the Sudan in November 1997, with Executive Order 13067; he renewed it in October 1998, understandably. Few diplomatic relationships were risked by attacking the Sudan and Afghanistan—and the relationships with the target countries were not among those considered. With this order, President Clinton "imposed trade sanctions on Sudan and blocked Sudanese government assets" prior to the August attacks.<sup>11</sup> In these cases, the U.S. objective of rolling back proliferation was closely aligned with its national security interests, from a military standpoint. The Sudanese plant was thought to be used in producing a critical component

of a nerve agent, with ties to the bin Laden terrorist organization. Striking the plant at the same time as the attack against bin Laden's leadership meeting definitely supported increased national security (unless one argues that violence only begets more violence, as some critics did). In these cases, all three criteria introduced to assess U.S. policy are less useful for discerning the reason for its actions in this case. Another way to discriminate which theory best describes the U.S. actions is to see how its actions are justified by international law.

### **Legal Issues**

In hindsight, the attack was not motivated by preventing proliferation, but by preventing another terrorist attack against U.S. vital interest, and punishing previous attacks. The administration called these attacks self-defense, but the public press also labeled the attacks "retaliation" for the 7 August 1998 terrorist bombings of U.S. embassies in Kenya and Tanzania.<sup>12</sup> Judging by the definition, these were reprisal attacks, versus preemptive self-defense. Goldman's definition for reprisal includes three parts:

[the U.S.] perceives a legal wrong to its interests...[and] by employing military force the United States would attempt to coerce the target state to modify its policy. Finally...the U.S. action would not fit within the confines of the definition of a state undertaking an act of preemptive self-defense.<sup>13</sup>

The U.S. saw itself legally wronged by the terrorist attack; it employed military forces to coerce bin Laden's network; and it was not self-defense. It was trying to affect the future behavior of other states, and to punish them at the same time. The self-defense question relates to whether a terrorist attack is an act of war, and therefore whether the laws of war apply. If terrorism is treated solely as a criminal problem, then the concept of self-

defense (a concept in war) does not apply. The U.S. arguably did not exhaust all other means of redress before these attacks. It did not allow the UN the chance to act first, for example.

## **Conclusion**

By justifying its actions in terms of self-defense, when they are really reprisal actions, the U.S. is following along a path that could lead to decreased legitimacy for its counter-proliferation strategy in the future. These recent actions are closer to what realists predict a state would do: act following its own interests (there is nothing wrong here in an anarchic, self-help environment), instead of relying on international law, morality and international organizations, such as the UN.

## **Iraqi WMD Attacks: Counter-Proliferation in Action**

Before addressing this case using the three criteria and international law, a description of the key issues that led up to the attack is in order. Then, the paper will examine the attacks using the three criteria. The legal arguments surrounding the attacks help discern the nature of the attacks. Last, the conclusion will illustrate that realism, versus idealism, drove the U.S. to attack Iraq.

## **Building up to DESERT FOX Attacks**

Since the Gulf War ended in 1991, the Iraqi regime has made several “full, final and complete disclosures” of its proscribed weapons, attempting to demonstrate compliance with UN Security Council Resolution 687 and end the punitive sanctions. Each disclosure listed more weapons, and their pattern of stonewalling and obstructing UNSCOM is nothing new. The U.S. has been adamant in its support of Iraqi full

compliance with UNSCR 687, and was instrumental in contributing to the 3 April 1991 resolution. Along with the United Kingdom, the U.S. persists in dismantling Iraqi WMD and missile programs. In early 1998, Iraq abrogated its responsibilities to the UNSCOM inspectors, blocking their access. U.S. threats and diplomacy brought them back to a measure of compliance that precluded bombing them.

On August 5th, Iraq announced they were suspending cooperation with UNSCOM and the IAEA again.<sup>14</sup> By October 31, Iraq said it would no longer cooperate with arms inspections.<sup>15</sup> President Clinton warned Iraq, and the U.S. and UK came close to attacking them in November; these attacks would have been authorized by UNSCR 1194, signed 9 September.<sup>16</sup>

In late November, UNSCOM inspectors were once again in Iraq, but were unable to complete all their inspections without interference. They left Iraq, reporting their failure. On 16 December 1998, President Clinton addressed the nation about the air attacks named Operation DESERT FOX. He stated:

Their purpose is to protect the national interest of the United States and, indeed, the interest of people throughout the Middle East and around the world...

This situation presents a clear and present danger to the stability of the Persian Gulf and the safety of people everywhere...

If we turn our backs on his defiance, the credibility of U.S. power as a check against Saddam will be destroyed...

They [the strikes] are designed to degrade Saddam's capacity to develop and deliver weapons of mass destruction, and to degrade his ability to threaten his neighbors.<sup>17</sup>

This four day campaign again came at a critical time for the investigation into President Clinton's affair with Monica Lewinsky. They raised questions about the timing of the strikes, since the House delayed their vote to impeaching him as a result of the strikes.

As in August, however, most Americans relied on their knowledge that such a decision was not the President's sole prerogative. President Clinton acted with the unanimous advice and full consent of his national security team. It was simply an incredibly unusual coincidence that the timing of Saddam's actions, the onset of Ramadan, and the impeachment vote all happened concurrently, driving a short window of opportunity for an effective air campaign.

The strikes were incredibly effective and the collateral damage was extremely low. The DOD used over 415 cruise missiles during the strikes, as well as over 650 British and U.S. aircraft sorties, to damage 100 military targets.<sup>18</sup> The strike set back the Iraqi WMD program, at least temporarily, and damaged Saddam's power to threaten his neighbors at the same time. This was the goal of the attacks, but was it consistent with U.S. national interests and its declared proliferation policies?

### **Diplomatic, Economic and National Security Interests**

Of all the cases examined, this one is the easiest to analyze using the three criteria. Diplomatic interests were served by the attacks; economic relations were served; and national security was supported by the attacks.

As President Clinton stated, it was also crucial in maintaining U.S. credibility—when it threatens to use force, it needs to know the threat will be taken seriously. This credibility is key to improving U.S. diplomatic efforts worldwide, not just in the Gulf region.

The U.S. has consistently pushed UNSCOM to succeed, publicly supporting the UN program. Last summer, however, UN inspector Scott Ritter resigned in protest: his accusations of a hollow inspection program cause one to question UNSCOM's

effectiveness. His allegations that the U.S. pulled its punches to avoid confrontation with Iraq may well be true. If the U.S. valued the UN's increased prestige (and its ability to grant legitimacy to WMD counter-proliferation efforts in general) over futile attempts to voluntarily roll back Iraq's WMD efforts, it may well have concluded that pursuing confrontation with Iraq was counterproductive to its larger aim of enhanced UN prestige. This could help to explain the December air campaign also. This was targeted as much at the Iraqi chemical and biological capabilities as at its nuclear and missile programs.

There were no competing demands between the military strikes and economic trade with Iraq, despite U.S. companies \$185 million worth of contracts under Iraq's oil-for-food program.<sup>19</sup> The U.S. does depend on stability in the region for consistent oil prices, crucial to its economy, as well as those of its allies.

There was an overriding national security interest in maintaining the stability of the Persian Gulf region, for both the U.S. and many of its allies get oil from the region. Unlike its competing interests in deals with China and Pakistan/India, this issue was clear-cut: the strikes served all three of the criteria established in the introduction. The criteria show this action aligns with both realist and idealist non-proliferation goals; therefore, this paper will analyze the legal arguments surrounding the attacks.

### **Legal Considerations**

As in August, the legal basis for the strikes illuminates the motive driving the U.S. to use force. President Clinton justified the allies attacks based on Saddam's threat to the world and the region, saying it posed a "clear and present danger to the stability of the Persian Gulf and the safety of people everywhere...[we attacked] to degrade his ability to threaten his neighbors."<sup>20</sup> This statement has idealism written all over it, but the stability

of the Persian Gulf has long been a vital national interest for the U.S., so realist ideas also explain the attacks there. This attack was not justified by claims of preemptive self-defense, as the attacks in August were; they seem even closer to Goldman's definition of reprisal. These attacks both punished Iraqi intransigence and the U.S. hoped Iraq would cooperate more fully in the future. These attacks were also justified by the UN approval granted by UNSCR 1194, although it is doubtful that all UN member states would have approved such a resolution. Now this paper will look at some implications of U.S. policy and these actions, and make a recommendation for future proliferation policy justification.

### Notes

<sup>1</sup> Knut Royce, "Plot to Kill Clinton Linked to bin Laden," *Long Island Newsday*, 30 August 1998, 17.

<sup>2</sup> James Risen, "Militant Leader Was A U.S. Target Since The Spring," *New York Times*, 6 September 1998, 1.

<sup>3</sup> John F. Harris, "In The Midst Of Scandal, Clinton Planned Strikes," *Washington Post*, 21 August 1998, 1.

<sup>4</sup> Risen.

<sup>5</sup> President, "Address to the Nation on Military Action Against Terrorist Sites in Afghanistan and Sudan," *Weekly Compilation of Presidential Documents*, 34, No. 34 (24 August, 1998): 1644.

<sup>6</sup> Paul Richter, "Sudan Attack Claims Faulty, U.S. Admits," *L.A. Times*, 1 September 1999.

<sup>7</sup> Tim Weiner and Steven Lee Myers, "Flaws In U.S. Account Raise Questions On Strike In Sudan," *New York Times*, 29 August 1998, 1; Tim Weiner and Steven Lee Myers, "U.S. Defends Attack On Sudanese Drug Plant," *New York Times*, 3 September 1998.

<sup>8</sup> Vernon Loeb, "Saudi Demands Compensation For Destroyed Plant," *Washington Post*, 4 Feb 1999, 9.

<sup>9</sup> Ibid.

<sup>10</sup> "A 2<sup>nd</sup> Tomahawk Dud Is Reported," *Los Angeles Times*, 30 August 1998.

<sup>11</sup> President, "Notice—Continuation of Emergency With Respect to Sudan," *Weekly Compilation of Presidential Documents*, 34, No. 44 (2 November, 1998): 2154.

<sup>12</sup> James Bennet, "U.S. Cruise Missiles Strike Sudan and Afghan Targets Tied To Terrorist Network," *New York Times*, 21 August 1998, 1., and John F. Harris, "In The Midst Of Scandal, President Planned Strikes," *Washington Post*, 21 August 1998, 1.

## Notes

<sup>13</sup> For a good discussion of the legal problems surrounding this issue, see Goldman, pages 39-44.

<sup>14</sup> President, "Letter to Congressional Leaders on Iraq's Compliance With United Nations Security Council Resolutions," *Weekly Compilation of Presidential Documents*, 34, No. 45 (9 November, 1998): 2260-6.

<sup>15</sup> Miles A. Pomper, "Republicans Urge Clinton To Pull No Punches With Iraq," *Congressional Weekly*, 14 November 1998, 3076.

<sup>16</sup> President, "Letter..." 9 November 1998.

<sup>17</sup> President, "Address to the Nation Announcing Military Strikes on Iraq," *Weekly Compilation of Presidential Documents*, 34, No. 51 (21 December, 1998): 2494-6.

<sup>18</sup> Linda D. Kozaryn, "Four Nights; 100 Targets," *American Forces Information Service News Articles*, n.p., on-line, available at [http://www.defenselink.mil/news/Dec1998/n12211998\\_981212.html](http://www.defenselink.mil/news/Dec1998/n12211998_981212.html), 31 January 1999.

<sup>19</sup> President, "Letter..." 9 November 1998, 2263.

<sup>20</sup> President, "Address..." 21 December, 1998, 2494-6.



## Chapter 5

### Conclusion

*It cannot be too clearly stated that international law is no protection except to the strong, and that the only laws which great powers recognize as binding are those of power and expediency.*

—S. L. Murray, *The Future Peace of the Anglo-Saxons*, (1905)

This analysis examined recent cases of U.S. non-proliferation and counter-proliferation actions to see if Peter Clausen's thesis still holds true. He said the U.S. non-proliferation goals have always been secondary to other national interests, and related the U.S. non-proliferation history since World War II to prove his point. This paper focused on recent acts by the Clinton administration, including its relations with China, the reaction to the south Asian arms race, the cruise missile attacks against Sudan and Afghanistan in August, and the December air strikes against Iraq. In summary, his realist description of previous U.S. actions holds true for recent U.S. activities also. These cases confirm Clausen's hypothesis that national interests are the real driving forces behind non-proliferation and counter-proliferation.

Chinese relations have been the subject of a large, bi-partisan investigation into the administration's lenient approach to trade in high technology sectors such as satellites and rocket launch advice. This trade is directly applicable to more reliable nuclear missile launches. While the report is still classified, the unclassified remarks of its

chairman, Rep. Cox, illustrate their conclusion. Overall the increased trade in dual-use technology and lax approach to national security breaches harmed national security.

U.S. non-proliferation efforts against India and Pakistan may well have postponed their testing, but it was against its national interests to expend great amounts of political energy to roll back either country's program. In this case, as with China, the national interest in maintaining diplomatic power and economic relations with both countries outweighed the non-proliferation agenda. This supports the hypothesis that realism drove U.S. policy efforts in both those cases.

When examining the post-test sanctions against Pakistan and India, one might be tempted to say the U.S. strategy worked: both countries are now planning to sign the CTBT this year, and are working to decrease tensions through bilateral talks. Pakistan still urges international/UN involvement to reach a "just" resolution over the Kashmir border region, but India thinks Kashmir is just fine the way it is—a part of India. Whether the U.S. sanctions were able to achieve this rapprochement, or whether it was the reality of being in a nuclear embrace with a neighbor, is hard to say conclusively. Both countries will not publicly admit that international sanctions forced them to concede anything at all. They both say they have achieved their aims, and need no further testing.

This may be as close to the truth as maintaining that U.S. pressure was effective. They may have seen a small window to conduct sufficient tests to allow for realistic computer models for designing warheads. With their goals achieved, why not sign the CTBT now and regain international acceptance? This argument cannot be disproved without access to sensitive internal documents of both governments. It illustrates the difficulties of assessing why a certain outcome is pursued.

When President Clinton authorized cruise missile strikes last August, he said he stayed up until 2:30 a.m. agonizing over whether the al Shifa pharmaceutical plant had a night shift that would be struck by the nighttime attack.<sup>1</sup> The planners and intelligence personnel assured him there was none. The attack coincided with other U.S. interests, including retaliating against terrorism. The fact that the U.S. has no significant economic relations with the Sudan contributed to convergent aims between counter-proliferation and counter-terrorism. Attacking Afghanistan was less related to WMD facilities, and more tied to the terrorists who were allegedly planning to use them in the future. As discussed earlier, it is difficult to use the three criteria to determine whether realism or idealism drove these attacks. Examining the international legal explanation for the attacks led to the conclusion that they are closer to reprisal than preemptive self-defense. Hence, realism was the driving force behind these attacks, as opposed to an idealist approach of using international law, morality and international organizations to combat the spread of WMD.

Similarly, combating the Iraqi WMD program was the reason for the four day air campaign against them in December. This attack was certainly due to a convergence between U.S. vital national interests and its counter-proliferation agenda. UNSCR 1194 justified the U.S. and UK strikes. The U.S. has prosecuted a low-level war of attrition with Iraqi forces in both the no-fly zones since then. Again, it is hard to accurately rule out either idealism or realism as the driving factor for these attacks by using the three criteria applied to the non-proliferation cases; looking to the legal reasoning behind the air strikes helped determine its true nature.

According to Goldman's definition, the air strikes were closer to a reprisal than preemptive self-defense.<sup>2</sup> As Hayes discussed, such a reprisal strategy leaves the military open to legal consequences—imagine a captured aviator facing trial for war crimes in an attacked state. International law would offer them little solace for their actions. In the end, Goldman does not advocate changing the legal structure to permit reprisals, or even a widened counter-proliferation “loophole” in the international legal system. Hayes does offer such a recommendation; he offers a new legal “doctrine of constraint” to justify such preemptive counter-proliferation attacks. When these attacks are tied to fighting terrorism, the administration can continue its dual strategy of criminal prosecution where possible, and military action, when appropriate.

The U.S. recently announced it was widening the target lists in potential countries that harbor terrorists to include government buildings and defense sites. According to Richard Clarke, “We may not just go in a strike against a terrorist facility; we may choose to retaliate against the facilities of the host country, if that host country is a knowing, cooperative sanctuary.”<sup>3</sup> Such widening of the potential targets makes such an attack much closer to reprisals. Such a strategy, applied to a counter-proliferation agenda, may get the U.S. more than it is bargaining for. As Goldman points out, if it leads to a widened definition of what's acceptable in pursuing counter-proliferation, then other countries with interests that clash with its national interests can use the new norm to justify counter-proliferation attacks against U.S. allies. Thus, the U.S. should strive to add the “doctrine of constraint” to the body of international law the world recognizes; this is addressed next.

## Notes

<sup>1</sup> Tim Weiner and Steven Lee Meyers, "Flaws In U.S. Account Raise Questions About Strike In Sudan," *New York Times*, 29 August 1998, 1.

<sup>2</sup> Goldman, Chapter 6, 39-44.

<sup>3</sup> John Diamond, "Administration Targets Terrorists' Hosts," *Philadelphia Inquirer*, 8 February 1999.

## Chapter 6

### Recommendation

*The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character as a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know and could not reasonably have been expected to know that the act ordered was unlawful.*

—United States Army, *The Law of Land Warfare*, (1956)

The United States counter-proliferation policy has accepted more aggressive means to combat proliferation of WMD. Recent counter-proliferation attacks have taken the form of air strikes, using both unmanned cruise missiles in August 1998, and manned aircraft in the four-day air campaign against Iraq's WMD facilities in December 1998. These strikes were militarily effective: the Chairman of the Joint Chiefs of Staff assessed the damage to the Iraqi program as setting them back by one to two years.<sup>1</sup> Such air strikes may not be enough, however. Some analysts say they're not effective enough, and against certain target sets (such as deeply buried bunkers), only ground forces can have the desired effects.<sup>2</sup>

Current constraints on employing ground forces, with their subsequent risk for higher casualties, means this avenue is less likely, given the perception that the American public will not stand for casualties. This may not be the case, however—if the public sees the overriding national interest being served, their tolerance for casualties incurred in pursuing a national counter-proliferation policy may be higher than currently assessed.

Given the priority this strategy is receiving lately, the U.S. should ensure it is adequately grounded in international law, to ensure future combatants are covered in their actions implementing the policy.

Hayes proposes a “doctrine of constraint” to address such issues. This doctrine would “fill the void between preemption and retaliation” justifying U.S. actions after

“satisfying the following tests:

- A past pattern of lawlessness must be established.
- Peaceful means of redress must have been unsuccessful.
- Evidence indicating the likelihood of future breaches of international law must be shown.
- The constraint operation must be reasonably proportionate to the *anticipated* wrong.
- The constraint operation must be against legitimate military (or terrorist) targets.
- Attacks against uninvolved civilians in any form must be strictly forbidden.”<sup>3</sup>

This doctrine would allow the U.S. to justify its counter-proliferation attacks in the future, avoiding some problems its officials and military personnel faced after Libyan 1986 strikes.

Even former Soviet Foreign Minister Eduard Shevardnadze recommended such a change before the UN in 1990. He stated:

In our view, there is an urgent need to institute a new norm in international law, which would declare the threat by any individual, for purposes of blackmail, of using weapons of mass destruction, hostage taking or mass terror to be a crime against humanity.<sup>4</sup>

His proposal shows practitioners around the world perceive this void in international law, and see the need to fill it. Stretching the legal concept of self-defense is not the best way to address this gap.

The U.S. should strive for a new legal construct, based on Hayes’ “doctrine of constraint,” to allow future counter-proliferation attacks to be founded on more than just

“might makes right” and verbal statements alleging preemptive self-defense. As Hayes points out, “if it looks like a duck, quacks like a duck, and waddles like a duck, it’s probably a duck.”<sup>5</sup> By adopting this doctrine now, the U.S. could ensure its future actions are justified so its troops pursuing the actions they’re ordered to accomplish are covered. To do otherwise is to do a disservice to the U.S. forces called to act in the future.

### Notes

<sup>1</sup> Linda D. Kozaryn, "Strikes damage more than expected, Shelton says," *American Forces Information Service News Articles*, n.p., on-line, Internet, 31 January 99, available at [http://www.af.mil/news/Jan1999/n19990107\\_990014.html](http://www.af.mil/news/Jan1999/n19990107_990014.html).

<sup>2</sup> Philip Finnegan and Robert Holzer, "Iraq's chem-bio effort can survive air strikes," *Army Times*, p. 28, 2 Mar 98.

<sup>3</sup> Hayes, 12 (emphasis in original).

<sup>4</sup> Eduard Shevardnadze, *Foreign Broadcast Information Service, Daily Report: Soviet Union 90-187*, at 7 (Sept 26, 1990); quoted in *Law and Force...*, by Damrosch and Scheffer, 51.

<sup>5</sup> Hayes, p. 10.



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